

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE LOUISIANA STATE HISTORIC PRESERVATION OFFICER,
THE LOUISIANA OFFICE OF HOMELAND SECURITY AND EMERGENCY PREPAREDNESS,
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

WHEREAS, the Federal Emergency Management Agency (FEMA), incorporated into the Department of Homeland Security, Emergency Preparedness and Response Directorate, proposes to administer the Federal Disaster Public Assistance (PA) Program, the Hazard Mitigation Grant Program (HMGP), Pre-disaster Hazard Mitigation, Federal Assistance to Individuals and Households, and the Flood Mitigation Assistance (FMA) Program pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, U.S.C. § 5121 et seq., (Stafford Act), and their implementing regulations contained in Title 44 Code of Federal Regulations (CFR) Part 206, and the National Flood Insurance Reform Act of 1994 and their implementing regulations contained in 44 CFR Part 78; the Disaster Mitigation Act of 2000 and its implementing regulations; and such other Acts, implementing regulations or congressionally authorized programs as are passed from time to time; and

WHEREAS, FEMA has determined that the implementation of these programs will result in undertakings (Undertakings) that may affect properties included on or eligible for the National Register of Historic Places and FEMA has consulted with the Advisory Council on Historic Preservation (Council) and the Louisiana State Historic Preservation Officer (SHPO), pursuant to the regulations, 36 CFR Part 800, implementing Sections 106 and 110(f) of the National Historic Preservation Act (NHPA), 16 U.S.C. 470; and

WHEREAS, FEMA has determined that the implementation of these programs may result in Undertakings that have the potential to affect historic properties that may have religious and cultural significance to federally recognized Indian Tribal governments (Tribes) on or off Tribal lands and FEMA may request that these Tribes be invited to participate in the terms of this Agreement to fulfill the requirements of Section 106; and

WHEREAS, with regard to such Tribal participation, any Tribal Historic Preservation Officer (THPO) that is signatory to this Agreement will be consulted on an equal basis with the SHPO, thus the term "SHPO" will be understood to include any THPO that is signatory to this Agreement, except with regard to termination of this Agreement (Stipulation XIII.); and

WHEREAS, as a result of the implementation of FEMA Programs, the state of Louisiana will receive financial and/or technical assistance from FEMA and will in turn provide monies and other assistance to eligible applicants and as such the Louisiana Office of Homeland Security and Emergency Preparedness (LOHSEP) will be responsible for administering these Programs, has participated in this consultation, and has been invited to enter into this Programmatic Agreement (Agreement); and

WHEREAS, FEMA also assists qualified applicants with direct Grants pursuant to the Federal Fire Prevention and Control Act of 1974, as amended (15 U.S.C. § 2201 et seq.) (a Program), and these applicants (Fire Grant Recipients, or Recipients) are responsible for administering this Program; and

WHEREAS, FEMA, the Council, LOHSEP, and SHPO acknowledge that the implementation of FEMA programs will be more effective if a Programmatic Agreement (Agreement), pursuant to 36 CFR §800.14(b), is in place to specify procedures to define the roles and responsibilities in the historic review process, to eliminate the need for the SHPO and Council review of certain routine activities with little potential to adversely affect historic properties; and further, to promote efficiency, so that the effects of Undertakings on

historic properties may be considered while delays to FEMA's delivery of disaster assistance are minimized; and

NOW, THEREFORE, FEMA, the Council, LOHSEP, and SHPO agree that these FEMA programs will be administered in accordance with the following Stipulations to satisfy FEMA's Section 106 responsibilities for all undertakings under FEMA actions and effectively integrate historic preservation concerns with the needs of FEMA's Undertakings. FEMA will not fund any application for assistance under these programs until the review of individual undertakings is completed pursuant to this Agreement.

STIPULATIONS

To the extent of its legal authority and in coordination with the Council, SHPO, and LOHSEP, FEMA shall require that the following measures be carried out:

LEAD AGENCY COORDINATION

- A. When FEMA is determined to be the Lead Agency, FEMA will coordinate the Section 106 review activities of all Federal agencies and Tribes that participate in Undertakings funded by the Programs.
- B. If a project has been previously reviewed and approved under the NHPA in another Federal program or by another Federal agency, no further review is required, as long as the project is the same one that was reviewed under the other program. The applicant and/or LOHSEP shall certify to FEMA that a project has not changed (i.e., that the project plans bear the scope of work as those referenced in the previous comment letter) when submitting a previous comment letter for compliance with the NHPA.
- C. FEMA may request that a federally recognized Tribe become a signatory to this Agreement by the execution of an Addendum with a signature page, thus accepting the provisions of this Agreement. The addition of such federally recognized Tribe without further changes to this Agreement does not require an amendment of the Agreement. The execution of such an Addendum, and the participation of such Tribe in this Agreement, evidence that the Tribe has accepted the provisions of this Agreement. (A sample Addendum is attached as Appendix B.)

II. APPLICABILITY

- A. This Agreement applies immediately upon the date of execution.
- B. FEMA has determined that implementation of the Programs as related to assistance to individuals and households (Section 408 of the Stafford Act, Individual and Household Program), with the exception of ground disturbing activities related to temporary housing, are Undertakings that do not have the potential to cause effects on historic properties; and FEMA has no further NHPA responsibilities, pursuant to 36 CFR §800.3(a)(1).
- C. This agreement will only apply to historic properties that retain National Register eligibility pursuant to 36 CFR Part 60.
- D. FEMA has determined the proposed Federal action is an Undertaking as defined in 36 CFR §800.16(y).
- E. FEMA will determine when an Undertaking meets applicable criteria of the Programmatic Allowances (Allowances) listed in Appendix B. FEMA will document this determination in the

project file and authorize the release of funding for the Undertaking without further review and SHPO notification.

- F. For all other activities, FEMA will conduct Section 106 review in accordance with Stipulation V. or VI. of this Agreement.

III. GENERAL

A. Professional Qualifications:

1. FEMA will use Federal, State, or contractor staff whose qualifications meet the Secretary of the Interior's (SOI) Professional Qualifications Standards (*Qualifications*), as determined by FEMA's Preservation Officer (FPO), in ensuring compliance with this Agreement.
2. FEMA acknowledges that Tribes possess special expertise in assessing the National Register eligibility of properties with religious and cultural significance to them.
3. FEMA shall ensure that all final reports resulting from Undertakings pursuant to this Agreement will be consistent with applicable SHPO guidelines for such documents.

- B. All time designations will be in calendar days. If any party does not comment within the agreed upon time frames, FEMA may assume that party's concurrence with FEMA's determination, and will notify all consulting parties of the action and proceed in accordance with this Agreement.

C. FEMA responsibilities:

1. FEMA may request that Federal, Tribal, State agency, or applicant staff that meet the *Qualifications*, as determined by FEMA's Preservation Officer, identify and evaluate historic properties on behalf of FEMA, as described in 36 CFR § 800.4 (b-c).
2. FEMA will review any National Register eligibility determinations resulting from the performance of these delegated activities.
3. FEMA will provide the SHPO and Council with an annual report on this Agreement for the previous calendar year, on March 31st of each year that this Agreement is in effect. This report will summarize the actions taken to implement this Agreement, and recommend any actions or revisions to be considered during the next year. These parties will review this information to determine if amendments are necessary.

D. SHPO responsibilities:

1. The SHPO will concur or non-concur with FEMA's National Register eligibility determinations and effect findings within the timeframes required by this Agreement.
2. The SHPO may delegate some or all of its responsibilities under this Agreement to persons who are not currently members of the SHPO staff and who will serve as SHPO representatives with respect to the actions and decisions required by this Agreement. The SHPO will consult with FEMA about the selection of representatives, the scope of responsibilities delegated, and implementing procedures related to the actions and decisions delegated.

E. LOHSEP responsibilities:

LOHSEP will ensure that all applicants are fully informed about their responsibilities as stipulated in this Agreement. This includes providing applicants with guidance about in kind repairs, pursuant to the Secretary's *Standards for the Treatment of Historic Properties 1995 (Standards)*, and ensuring that applicants understand and acknowledge any additional stipulations placed on Undertakings as a result of Section 106 consultation or other terms of this Agreement. LOHSEP will also ensure that all applicants understand that failure to comply with these terms will jeopardize FEMA participation in an Undertaking.

IV. INITIAL COORDINATION

Upon entering into this Agreement, FEMA will meet with the SHPO and LOHSEP to establish points of contact and protocols for the implementation of the Agreement. Following a Presidential emergency or major disaster declaration (Disaster), SHPO and LOHSEP representatives will then attend a Disaster-specific historic preservation-scoping meeting with FEMA, where FEMA and LOHSEP will provide guidance on program issues and processes. FEMA and LOHSEP, as appropriate, will also present information related to the Section 106 review process to all applicants at the applicants' briefings and kickoff meetings.

A. FEMA will:

1. In the aftermath of a Disaster, determine with the SHPO those historic properties that are standing structures, which are Program eligible, that have not retained National Register eligibility. This Agreement will only apply to historic properties that retain National Register eligibility in the aftermath of the Disaster, pursuant to 36 CFR Part 60. For those Undertakings involving standing structures that lack integrity as agreed by FEMA and SHPO, FEMA will conclude its Section 106 review for that Undertaking and document the decision in the project file. If FEMA and the SHPO do not agree on whether a historic property has retained National Register eligibility, FEMA will review all Undertakings that may affect the property in accordance with Stipulations V. through VII.
2. Consult with other Federal agencies and any Federally-recognized Tribes having jurisdiction for Undertakings related to the Programs to ensure compliance with applicable historic preservation laws and regulations.
3. Develop with the SHPO a feasible plan for involving the public in the Section 106 review process for specific projects. In doing so, FEMA will seek and consider the views of the public in a manner that reflects the nature and complexity of the Undertaking and its potential to effect historic properties, the likely interest of the public in those effects, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the Undertaking. FEMA in consultation with the SHPO may invite interested groups or persons to participate as consulting parties in the Section 106 process in accordance with 36 CFR §800.3(f).

B. The SHPO will:

1. Provide FEMA with available information about historic properties within the declared Disaster area, including:
 - a. historic properties listed in or previously determined eligible for the National Register through a Section 106 review or by the SOI;

- b. properties listed in the Louisiana Historic Standing Structures Survey;
 - c. geographic areas with high potential for archaeological resources and areas where it is known that there are not any archaeological resources; and
 - d. previously identified Traditional Cultural Properties, if available.
2. Provide available listings of previously identified or unevaluated historic properties within the declared Disaster area, and geographic areas within the affected area with a high potential for unidentified historic properties.
 3. Identify SHPO staff or consultants to assist FEMA staff with its Section 106 responsibilities, and identify, in coordination with FEMA, specific activities that the SHPO may perform at FEMA's request for specific projects.
 4. Assist FEMA in identifying: Tribes with jurisdiction for activities related to the Programs; Tribes that may attach religious and cultural significance to properties in the Disaster area; individuals or organizations with a demonstrated interest in an Undertaking affecting historic properties, due to the nature of their legal or economic relation to, or their concern with the effects of the Undertaking on the properties; and organizations in the declared Disaster area that have an interest in historic properties. FEMA and SHPO will jointly contact these interested parties to inform them of this Agreement and to request information on the location of damaged historic properties.
 5. Assist local jurisdictions in identifying staging and disposal sites for debris disposal and sites for chipping of vegetation debris, if applicable, that will have no potential to cause effects on historic properties.

V. EXPEDITED PROJECT REVIEW FOR EMERGENCIES

- A. Immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106 [36 CFR § 800.12(d)].
- B. As a result of or in anticipation of a disaster, FEMA may be required to perform or authorize funding for emergency protective measures in response to an immediate threat to human health and safety or improved property, which may adversely affect historic properties. For these and any other Undertakings that the Federal Coordinating Officer (FCO) determines are of an emergency nature as defined in Section 102(1) of the Stafford Act, and are not exempt from Section 106 review in accordance with Stipulation V.A. above, FEMA will conduct the following expedited review:
 1. The expedited review period will begin at the time that FEMA determines an emergency action is required and will remain in effect for the time necessary to implement this expedited review, but for not more than 30 days after the time of discovery of the emergency.
 2. The FCO will certify in writing to the SHPO the need for FEMA to conduct an expedited review for individual Undertakings. Should FEMA find it necessary to extend the expedited review period beyond 30 days, FEMA will, in 30-day increments, request an extension from Council in writing. FEMA will immediately assume Council's concurrence unless notified otherwise.
 3. If it appears that an emergency action will adversely affect a historic property during this expedited review period, FEMA will provide the SHPO with available information about the

condition of the property, the proposed action, and prudent and feasible measures that would take the adverse effect into account, requesting the SHPO's comments. FEMA may provide this information through written requests, telephone conversations, meetings, or electronic media. The SHPO will respond to any FEMA request for comments within 3 days after receipt. If FEMA determines the nature of the emergency action warrants a shorter time period for SHPO review, FEMA will notify the SHPO immediately.

4. If FEMA does not accept the recommendations provided by the SHPO pursuant to this Stipulation, or the SHPO objects to FEMA's proposal to use the emergency review procedure and/or proposed treatment measures, FEMA will consult with the SHPO to resolve the dispute. If FEMA is unable to resolve the dispute, FEMA will seek the Council's comments. The Council will provide final comments to FEMA within 3 days after receipt of FEMA's request. If FEMA determines the nature of the emergency action warrants a shorter time period for Council review, FEMA will notify the Council immediately.
5. Emergency actions that FEMA has determined will not adversely affect an identified historic property or a property that is determined to be 50 years old or older may proceed without further review pursuant to this PA unless FEMA elects to consult with the SHPO. FEMA will document this decision with a written record in the project file.

VI. PROGRAMMATIC ALLOWANCES

- A. FEMA will determine if the actions of an Undertaking are included in the Programmatic Allowances (Allowances) in Appendix A. If so, FEMA will document this determination in the project file and may authorize funding for the Undertaking.
- B. For all other activities, FEMA will conduct Section 106 review pursuant to Stipulation V. or VII.

VII. STANDARD PROJECT REVIEW

The signatories of this agreement will implement the following Standard Project Review procedures for all non-emergency undertakings:

- A. Area of Potential Effects (APE): For all project reviews of standing structures the APE will be the individual facility (as defined in 44 CFR §206.201(c)) when an Undertaking is limited to the in kind repair or rehabilitation of the facility's interior or exterior. FEMA will establish the APE in consultation with the SHPO for all other Undertakings including those that may affect archaeological properties. FEMA will also identify and invite other appropriate parties (such as local governments and the public) to provide information related to the APE.
- B. In accordance with 36 CFR §800.4(b, c), FEMA will determine, in consultation with the SHPO, if the APE contains historic properties (including archaeological properties) that are listed in or eligible for the National Register. For small projects under the Public Assistance Program, as defined by 44 CFR 206.203(c)(2), (less than or equal to \$55,500 in FY 2005), properties in the APE that will be returned to pre-disaster condition, and that are not listed in or previously determined eligible for the National Register or in the Louisiana Historic Standing Structures Survey, will not require review by the SHPO. FEMA may approve funding for such projects after documenting its decision in writing in the project files and conclude the review required by this Agreement.
- C. If no historic properties are present, or if an Undertaking is designed to avoid archeological properties, or avoid affecting the qualifying characteristics of historic properties that are standing

structures, FEMA will make a finding of "no historic properties affected" in accordance with 36 CFR §800.4(d)(1). FEMA will notify the SHPO and all consulting parties of this finding and provide supporting documentation. Unless the SHPO or any consulting party objects to this finding within 14 days after receipt, FEMA will complete the Section 106 review and may approve funding.

- D. If FEMA finds an Undertaking may affect identified historic properties, or if the SHPO objects to the finding of "no historic properties affected" within 14 days after receipt, FEMA will consult with the SHPO to apply the criteria of adverse effect, pursuant to 36 CFR §800.5(a)(1), or determine if the Undertaking meets the SOI Standards for the Treatment of Historic Properties (Standards), or any other applicable SOI Standards (most updated version). FEMA will also consider any views provided by consulting parties and the public related to such effects.

1. For standing structures only:

- a. If FEMA and the SHPO agree that an Undertaking does not meet the adverse effect criteria or that it meets the Standards, FEMA will propose a finding of "no adverse effect" pursuant to 36 CFR §800.5(b). FEMA will notify the SHPO and all consulting parties of this finding and provide supporting documentation pursuant to 36 CFR §800.5(c). Unless the SHPO or any consulting party objects within 14 days after receipt of the notification, FEMA will complete the Section 106 review and may approve funding.
- b. If the SHPO objects to the finding of "no adverse effect", FEMA will request through LOHSEP that the applicant revise the scope of work to substantially conform to the Standards, in consultation with the SHPO and all consulting parties. FEMA also will ensure that the revised scope of work is reviewed for funding eligibility. If the applicant modifies the scope of work to address the objections, FEMA will notify the SHPO and all consulting parties, and provide supporting documentation. Unless the SHPO or any consulting party objects within 14 days after receipt, FEMA will complete the Section 106 review and may approve funding.
- c. If the applicant is unable to, or will not modify the Undertaking to meet the Standards or address the objections, FEMA will initiate adverse effect consultation pursuant to Stipulation VII.

2. For archaeological properties only:

- a. If there is a reasonable potential for archaeological properties to be present within the APE, FEMA will consult with the SHPO to determine the level of effort necessary to identify the anticipated type and location of these properties.
- b. If the SHPO or any other consulting party objects to a "no adverse effect" finding whereby identified archaeological properties can be avoided or effects minimized through redesign of an Undertaking, or through procedures or requirements agreed upon among all the consulting parties; or concurs that there will be an adverse effect, FEMA will initiate adverse effect consultation pursuant to Stipulation VII.

VIII. RESOLUTION OF ADVERSE EFFECTS FOR HISTORIC PROPERTIES

- A. If FEMA finds that an Undertaking will adversely affect a historic property, FEMA will determine if the project will be addressed with a Memorandum of Agreement (MOA) developed in

accordance with 36 CFR §800.6(b) or through a Secondary Programmatic Agreement (Secondary Agreement). Following this decision FEMA will notify the SHPO, all other consulting parties, and provide the Council with an adverse effect notice, including documentation in accordance with 36 CFR §800.11(e).

1. Memorandum of Agreement: FEMA will develop a MOA in accordance with 36 CFR § 800.6 (c) to outline measures to minimize or mitigate adverse effects on historic properties. FEMA may also consider reasonable alternate treatment measures that serve an equivalent or greater public benefit than standard measures (such as recordation, curation, relocation, or elevation) or archeological data recovery, while promoting the preservation of historic properties. FEMA will attempt to identify all such feasible measures in coordination with the SHPO and any other consulting parties. Alternate measures may include, but are not limited to, preservation planning, interpretive programs, or development of a historic properties database using Geographic Information Systems.
2. Secondary Programmatic Agreement: FEMA, the SHPO, LOHSEP, Council if participating, and other consulting party may develop a Secondary Agreement to identify programmatic conditions or treatment measures for multiple, but similar Undertakings by a single applicant.

B. FEMA will involve the public in the resolution of adverse effects in accordance with 36 CFR §800.6(a)(4).

C. When an undertaking will adversely affect a National Historic Landmark (NHL), FEMA will also notify the National Park Service Regional Office of this consultation and will invite Secretary of the Interior (Secretary) to participate. When the Council participates in consultation concerning a NHL, it will report the outcome of the review process to the FEMA Director and the Secretary.

D. When an Undertaking will adversely affect an archaeological property, FEMA may treat the adverse effect by providing for the recovery of significant information through archaeological data recovery or other scientific means, assuming provisions in Stipulation VI have been exhausted. To accomplish this objective, FEMA will follow the SOI's *Guidelines for Archaeological Documentation* as well as the SHPO's data recovery/documentation guidelines; and confer with the other consulting parties to prepare a data recovery plan, including material and record curation provisions. For sites where FEMA determines special circumstances exist or when other treatment measures are appropriate, FEMA will consult further with the other consulting parties to develop an appropriate approach to resolving the adverse effects.

IX. CHANGES TO APPROVED SCOPE OF WORK

LOHSEP will notify FEMA as soon as practicable of any proposed change to the approved scope of work for an Undertaking related to a historic property. FEMA will then consult with the SHPO or authorize LOHSEP to consult with the SHPO, to determine if the change will have an effect on the property. FEMA may authorize the applicant to proceed with the change if it meets an Allowance or if, for a standing structure, the change can be modified to conform to the Standards, or any other applicable SOI Standards. If FEMA determines that the change does not meet an Allowance, or if FEMA and the SHPO determine that the change cannot be modified to conform to the Standards, or any other applicable SOI Standards, FEMA will initiate adverse effect consultation pursuant to Stipulation VII.

X. UNEXPECTED DISCOVERIES

LOHSEP will notify FEMA as soon as practicable if it appears that a FEMA funded Undertaking will affect a

previously unidentified property that may be eligible for the National Register or affect a known historic property in an unanticipated manner. LOHSEP will require the applicant to stop construction activities in the vicinity of the discovery and will require the applicant to take all reasonable measures to avoid or minimize harm to the property until FEMA concludes consultation with the SHPO. (In the case of human remains, LOHSEP will require the applicant to notify the local law enforcement office.) FEMA will notify the SHPO at the earliest possible time and consult to develop actions that will take into account the effects of the undertaking. FEMA will notify the SHPO of any time constraints, and FEMA and the SHPO will mutually agree upon time frames for this consultation. LOHSEP and the applicant may participate in this consultation. FEMA will provide the SHPO with written recommendations that take the effect of the undertaking into account. If the SHPO does not object to FEMA's recommendations within the agreed upon time frame, FEMA will require the applicant to modify the scope of work as necessary to implement the recommendations.

XI. DISPUTE RESOLUTION

- A. Should the SHPO, LOHSEP, Council, or any other consulting party object within time frames provided by this Agreement to any plans, specifications, or actions provided for review pursuant to this Agreement, FEMA will consult further with the objecting party to seek resolution. Should FEMA object within time frames provided by this Agreement to any plans, specifications, or actions provided for review pursuant to this Agreement, FEMA will consult further with the other parties to seek resolution. If FEMA determines within 14 days of receipt that LOHSEP, the SHPO, or the Council's objection cannot be resolved; FEMA will forward to the Council all documentation relevant to the dispute including FEMA's proposed resolution to the objection.
- B. Any recommendation or comment provided by the Council will pertain only to the subject of the dispute. The responsibility of the signatories to carry out all actions under this Agreement that are not subject to the dispute will remain unchanged. The signatories will continue to implement all other terms of the Agreement that are not subject to dispute.
- C. At any time while this Agreement is in effect, should a member of the public object to any measure of this Agreement or its implementation, FEMA will take the objection into account and consult with that party, and the SHPO, or LOHSEP, as appropriate, to address the objection.

XII. ANTICIPATORY ACTIONS

- A. FEMA will not grant assistance to an applicant who, with intent to avoid the requirements of this Agreement or Section 106 of NHPA, has intentionally significantly adversely affected a historic property to which the assistance would relate, or having legal power to prevent it, allowed such significant adverse effect to occur. After consultation with the SHPO and Council, FEMA may determine that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant and will complete consultation for the undertaking pursuant to Stipulation VII.
- B. FEMA will specifically advise LOHSEP of this Stipulation and will require that LOHSEP advise its applicants in writing that they may not initiate construction on projects for which they are seeking Federal funding prior to compliance with this Agreement. LOHSEP also will advise its applicants that they will jeopardize Federal funding if construction is initiated prior to compliance with this Agreement.


XIII. DURATION, AMENDMENTS, AND TERMINATION

- A. Duration: Unless terminated pursuant to Stipulation XIII.C. below, this Agreement shall remain in effect from the date of execution until FEMA, in consultation with all other signatories, determines that the terms of this Agreement have been fulfilled in a satisfactory manner. Upon a determination by FEMA that the terms of this Agreement have been satisfactorily fulfilled, this Agreement will terminate and have no further force or effect. FEMA will provide all other signatories with written notice of its determination and of termination of this Agreement. Unless amended otherwise, this Agreement will expire on December 31, 2014.
- B. Amendments: If any signatory to the Agreement determines that the Agreement cannot be carried out, the signatories will consult to seek amendment of the Agreement. Amendments to this Agreement will be specific to the applicable disaster unless otherwise agreed to by the signatories.
- C. Termination: FEMA, LOHSEP, the SHPO, or Council may terminate this Agreement by providing 30 days written notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. Termination of this Agreement will require compliance with 36 CFR Part 800. This Agreement may be terminated without further consultation by the execution of a subsequent Agreement that explicitly terminates or supersedes its terms, or by FEMA's implementation of Program Alternatives, pursuant to 36 CFR §800.14.


XIV. EXECUTION OF PROGRAMMATIC AGREEMENT

- A. This Agreement may be executed in counterparts, with a separate page for each signatory, and FEMA will ensure that each party is provided with a fully executed copy. This Agreement will become effective on the date of the last signature to this Agreement.
- B. FEMA programs authorized by Congress in the future may be included under this Agreement, without amending this Agreement.
- C. EXECUTION AND IMPLEMENTATION of this Programmatic Agreement evidences that FEMA has afforded the Council a reasonable opportunity to comment on its administration of all aforementioned programs pursuant to the Stafford Act, the National Flood Insurance Reform Act, Disaster Mitigation Act, and the Fire Prevention and Control Act, and further evidences that FEMA has satisfied its Section 106 responsibilities for all individual Undertakings of these programs.

FEDERAL EMERGENCY MANAGEMENT AGENCY

By: 
Donald R. Fairley, REM
Environmental Officer
Region VI

Date: 10/18/04

By: 
Ron Castleman,
Regional Director
Region VI


Date: 10-18-04

LOUISIANA HISTORIC PRESERVATION OFFICER

By: Pam Breaux
Pam Breaux
State Historic Preservation Officer
Louisiana Office of Cultural Development

Date: 10-25-2004

LOUISIANA OFFICE OF HOMELAND SECURITY AND EMERGENCY PREPAREDNESS

By: 
Colonel Michael L. Brown
Assistant Director
Louisiana Office of Homeland Security and Emergency Preparedness

Date: 10/19/04

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John M. Fowler
John M. Fowler
Executive Director
Advisory Council on Historic Preservation

Date: 12/2/04

APPENDIX A: PROGRAMMATIC ALLOWANCES

The following repair or construction activities do not require review by the SHPO pursuant to Stipulations III-VII. This list may be revised without amending this Agreement, with a letter concurred to by FEMA and the SHPO.

When referenced in an Allowance, "in kind" shall mean that is either the same or a similar material, and the result will match all physical and visual aspects, including form, color, and workmanship. "In kind" mortar will also match the strength, content, color, rake, joint width, and tooling of historic mortar.

I. GROUND DISTURBING ACTIVITIES AND SITE WORK shall mean all work being performed in previously disturbed or archaeologically surveyed areas that is consistent with the Standards or any other applicable SOI Standards latest editions.

- A. Ground disturbing activities related to the repair, replacement, reinforcing or pouring of footings, foundations, retaining walls, other slope stabilization systems (i.e., gabion baskets, etc.), and utilities (including sewer, water, drains, electric service or distribution, gas, communications, leaching systems, cesspools, and septic tanks). This Allowance refers to archeological review. The Allowance also applies to historic review of character defining features of a historic property that is listed in or eligible for listing in the Register, when the work is in kind.
- B. Substantial in kind repair, replacement, or upgrade of culvert systems within rivers, streams, or drainage ways, including any moderate increase in capacity. This Allowance also applies to related features of historic properties such as headwalls and wing walls that may be included in or eligible for inclusion in the Register, when the work is to be in kind.
- C. Repair, replacement, or hardening of utilities under existing improved roads or roadways, or within previously disturbed rights of way, and for repair, replacement, or hardening of above ground utilities where they are set in or immediately adjacent to their previous location.
- D. In kind repair or replacement of driveways, parking areas, and walkways.
- E. In kind repair or replacement of fencing and other freestanding exterior walls.
- F. Substantially in kind repair or replacement of metal utilitarian structures (i.e. pump houses, etc.), including exposed pipelines. Modern materials may be used, provided their finish is compatible with existing structures and the site. Structures such as bridges, water towers, service and antenna towers will not be considered utilitarian structures.
- G. Installation of temporary structures for uses such as classrooms, offices, or medical support facilities, except when located in historic districts or archaeologically sensitive areas.
- H. Installation of scaffolding, temporary barriers (i.e., chain link fences, etc.), polyethylene sheeting, or tarps, provided such work will not result in additional damage, irreversible alterations, or significant loss of historic fabric.
- I. In kind repair or replacement of landscaping and utilities, such as paving, planters, trellises, irrigation, and lighting.

- J. In kind repair, replacement, or upgrade to codes and standards of existing piers, docks, boat ramps, boardwalks, stands, gazebos, and dune crossovers, provided the footprint would substantially match the existing footprint.
- K. Debris collection from public rights of way, transport, and disposal in existing licensed solid waste facilities. The Allowance does not include the establishment or expansion of debris staging or disposal areas.
- L. Sediment removal from man-made drainage facilities, including retention/detention basins, ponds, ditches, and canals, in order to restore the facility to its pre-disaster condition. The sediment may be used to repair eroded banks or disposed of at an existing licensed or permitted spoil site.
- M. Dewatering of flooded developed areas.
- N. Placement of emergency beach berms seaward of improved property where severe erosion has occurred, with work performed under the authority of U.S. Army Corps of Engineers and/or a State environmental enforcement agency's permits for the sand deposit areas and upland or offshore borrow sites, including dredge spoil piles.

II. BUILDINGS, requiring repairs or replacement, when all work is consistent with the Secretary of the Interior's Standards, latest edition.

A. Interior Work: Floors, Walls, Stairs, and Ceilings

- 1. In kind repair, replacement, restoration, preservation, protection, maintaining of materials, or features.
- 2. In kind repair of interior floors, walls, stairs, and ceilings. The Allowance applies to repair of interior finishes, including plaster and wallboard, provided the repair is restricted to damaged areas and does not affect adjacent materials. The Allowance does not apply to substrates for decorative materials such as murals, glazed paint, gold leaf, etc.
- 3. In kind repair or replacement of specialized finishes such as decorative painting, glazing, or gilding on flat or ornamental plaster; or repair or replacement of ornamental plaster, when such repair or replacement is undertaken by those experienced in such finish work. Damaged ornamental plaster will be repaired or reattached when possible. Where severity of deterioration requires replacement, the ornamental plaster will be replaced in kind; every effort shall be made to minimize the loss of additional historic fabric through use of the gentlest means of repair possible, and through adequate protection of undamaged areas. All repairs or replacements will be made in accordance with recommendations laid out in U.S. Department of Interior Preservation Briefs: 21 (Repairing Historic Flat Plaster-Walls and Ceilings), 23: (Preserving Historic Ornamental Plaster) and 28: (Painting Historic Interiors). When extensive damage (25% or more by area) to specialized finishes are involved, coordination with the SHPO will be conducted prior to approving and funding the project.
- 4. Repair or replacement of suspended or glued ceiling tile.
- 5. Installation of grab bars and other such minor interior modifications required for compliance with the Americans with Disabilities Act (ADA).
- 6. Non-destructive or concealed testing for hazardous materials (i.e., lead paint, asbestos, etc.)

or for assessment of hidden damages.

B. Utilities, Mechanical, and Electrical Systems

1. Minor interior mechanical (e.g., HVAC), electrical, or plumbing work, limited to upgrading, elevating, or in kind replacement. Historic fixtures, grilles, etc., where exposed to view, shall be repaired in kind for the Allowance to apply. The Allowance shall not apply to installation of exposed new ductwork.
2. Replacement or installation of interior fire detection, fire suppression, or security alarm systems. The Allowance does not apply to surface mounted wiring, conduits, piping, etc., unless previously existing.

C. Windows and Doors

1. In kind repair or replacement of damaged or deteriorated windows and doors including all hardware.
2. Replacement of windowpanes in kind. Clear plate, double, or triple insulating glazing be used, provided it does not result in altering the existing window material or form. This Allowance does not apply to the replacement of existing archaic or decorative glass. Historic windows or glazing may be treated with clear window films.

D. Exterior Walls, Cornices, Porches, and Foundations

1. Repainting of surfaces, provided that destructive surface cleaning and preparation treatments are not used. Such cleaning systems must be approved by the SHPO before the work commences.
2. In kind repair or partial replacement of porches, cornices, siding, balustrades, stairs, or trim.
3. In kind repair or replacement of signs or awnings.
4. Installation of temporary stabilization bracing or shoring, provided such work does not result in additional damage, significant loss of historic fabric, or irreversible alterations to this or adjacent areas.
5. Anchoring of walls to floor systems, provided the anchors are embedded and concealed from exterior view, and disturbed historic fabric is restored in kind.
6. In kind repair or reconstruction of concrete and masonry walls, parapets, chimneys, or cornices, using compatible brick and mortar as previously described.
7. Bracing and reinforcing of chimneys and fireplaces, provided the bracing and reinforcing are either concealed from exterior view, or removable in the future.
8. Reinforcing of foundations and addition of foundation bolts, provided that visible new work is in kind, and if required, mortar shall be as previously described.

E. Roofing

1. In kind repair, replacement, or strengthening of roofs including roofing, gutters, or downspouts. Cement asbestos shingles may be replaced with asphalt-based shingles, and untreated wood shingles or shakes may be replaced with similar items of fire resistant wood.

F. Weatherproofing and Insulation

1. Caulking and weather-stripping to complement the color of adjacent surfaces or sealant materials.
2. In kind replacement or installation of insulation systems, provided that existing plaster, woodwork, or siding is not altered. The Allowance does not apply to urea formaldehyde foam insulation or any other thermal insulation containing water, when installed within wall cavities. It does not apply to exterior insulation finishing systems (EIFS) that do not include an adequate vapor and moisture drainage system, or work in enclosed spaces that are not finished.

G. Seismic Upgrades

1. The installation of the following seismic upgrades, provided that such upgrades are not visible on the exterior or within character defining historic interiors: cross bracing on pier and post foundations; metal fasteners; collar ties; gussets; tie downs; strapping and anchoring of mechanical, electrical, and plumbing equipment; concealed anchoring of furniture; installation of plywood diaphragms beneath first floor joists, above top floor ceiling rafters, and on roofs; and automatic gas shut off valves.

- H. Building contents, repair or replacement, including furniture and equipment (e.g., medical equipment).

III. ROADS AND ROADWAYS

- A. Repair of roads to pre-disaster geometric design standards and conditions using in kind materials, number and width of lanes, shoulders, medians, curvature, grades, clearances, and side slopes.
- B. Repair of road composition finish course with materials to maintain pre-disaster size, traffic capacity, and load classifications of motor vehicles, including the reshaping and compacting of roadbed soil and the repair of asphalt or concrete pavements
- C. Repair or replacement of traffic control devices such as traffic signs and signals, delineators, pavement markings, and traffic surveillance systems.
- D. In kind repair of road lighting systems, including period lighting fixture styles.
- E. In kind repair of road appurtenances such as curbs, berms, fences, and sidewalks.
- F. In kind repair of roadway safety elements such as barriers, guardrails, and impact-attenuation devices.

IV. BRIDGES

- A. In kind repairs of abutments, wing walls, piers, decks, and fenders, where no new construction is proposed.

V. UTILITIES

- A. Replacement or relocation of existing utility poles between the edge of sidewalk and the road.

VI. AIRPORTS

- A. Repair of existing runways, taxiways, roadways, aprons and other hard surface facilities.
- B. In kind repair of safety components, including beacons, on airport property.
- C. In kind repair of existing beacons or other navigation aids not on airport property.

VII. RAILROADS

- A. In kind repair or replacement of railroad safety components.
- B. Repair of railroad crossings.
- C. In kind replacement of existing bolt connected railroad tracks and wood ties.
- D. Repair of passenger loading areas.

VIII. ACQUISITIONS

- A. Funding the administrative action of acquiring properties in buyout projects, including the real estate transaction and excluding demolition, providing that the SHPO was notified of the pending action and their comments were solicited by LOHSEP during the selection process.

IX. FEES AND SERVICES, shall be based upon:

- A. Miscellaneous labor costs.
- B. Rental or purchase of vehicles or other motorized equipment.
- C. Builder's fees.
- D. Fees for architectural and engineering or other design services, provided the services will not result in an adverse effect on a property listed in or eligible for the Register.
- E. Reimbursement of an applicant's insurance deductible, not to exceed \$1,000.

X. HUMAN SERVICES

The following activities relating to implementation of Sections 408, 409, 411, 412, 415, and 416 of the Stafford Act:

- A. The minimal repair program.
- B. Temporary housing for disaster victims whose homes are uninhabitable, with the exception of

potential archeological issues related to temporary housing sites in previously undisturbed areas.

- C. Disaster unemployment assistance.
- D. Legal services.
- E. Crisis counseling.
- F. Loans or grants to individuals, businesses, and farmers for the repair, rehabilitation, or replacement of damaged real and personal property.
- G. The Cora Brown Fund, to assist victims of natural disasters for those disaster-related needs that are not met by government agencies or private organizations.

XI. VECTOR CONTROL

- A. Application of pesticides to reduce adverse public health effects, including aerial and truck mounted spraying.

APPENDIX B
[FEDERALLY RECOGNIZED TRIBES]
ADDENDUM TO THE PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE LOUISIANA STATE HISTORIC PRESERVATION OFFICER,
THE LOUISIANA OFFICE OF HOMELAND SECURITY AND EMERGENCY PREPAREDNESS,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
_____ INDIAN TRIBE,

WHEREAS, in response to a Presidentially declared Disaster in Louisiana (Disaster), the Federal Emergency Management Agency (FEMA), incorporated into the Department of Homeland Security, Emergency Preparedness and Response Directorate, may administer the Federal Disaster Public Assistance Program, the Hazard Mitigation Grant Program, Pre-disaster Hazard Mitigation, Federal Assistance to Individuals and Households, and the Flood Mitigation Assistance Program (Programs) pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121-5206) (Stafford Act), its implementing regulations in Title 44 of the Code of Federal Regulations (44 CFR) Part 206, Sections 1366 and 1367 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c-d), and their implementing regulations in 44 CFR Part 78; and

WHEREAS, FEMA, the Louisiana State Historic Preservation Officer (SHPO), the Louisiana Office of Homeland Security and Emergency Preparedness, and the Advisory Council on Historic Preservation have recognized that the Programs may be implemented on lands under the jurisdiction of the _____ Indian Tribe, which did not participate in the development of this Programmatic Agreement (Agreement); and

WHEREAS, FEMA has determined that certain Undertakings may affect properties with religious and cultural significance to the Tribe, that are listed in or eligible for the National Register of Historic Places (historic properties), on or off Tribal lands, and has consulted with the Tribe and its Tribal Historic Preservation Officer (THPO) pursuant to 36 CFR § 800.14(b)(3) of the regulations implementing Section 106 of the National Historic Preservation Act (NHPA);

NOW, THEREFORE, FEMA has requested that the _____ Tribe execute this Addendum to facilitate the Section 106 review of Undertakings that may directly or indirectly affect Tribal historic properties.

STIPULATIONS

FEMA will require that the following Stipulations be implemented:

[OPTION 1: The THPO has not assumed SHPO responsibilities pursuant to § 101(d)(2) of the NHPA]

1. FEMA will consult with the _____ THPO in addition to the SHPO, pursuant to this Agreement, for all Undertakings that may affect historic properties, on or off Tribal lands, with religious and cultural significance to the _____ Tribe. The THPO agrees to participate in the review of all such Undertakings in accordance with this Agreement. All references to the term "SHPO" in this Agreement are understood to include both the SHPO and the THPO for review of these Undertakings.
2. FEMA will require any Federal agencies participating in the Undertaking to consult with the THPO in addition to the SHPO, in accordance with this Agreement and Addendum.
3. This Addendum takes effect on the date it is fully executed by FEMA, [any other participating Federal agency], and the THPO.

[OPTION 2: The THPO has assumed SHPO responsibilities pursuant to § 101(d)(2) of the NHPA]

1. FEMA recognizes that the _____ Tribe has assumed the Section 106 responsibilities of the SHPO on Tribal lands, pursuant to § 101(d)(2) of the NHPA, and FEMA will consult with the _____ THPO pursuant to this Agreement, in lieu of the SHPO, for all Undertakings that may affect historic properties on Tribal lands, with religious and cultural significance to the Tribe. The THPO agrees to participate in the review of all such Undertakings in accordance with this Agreement. All references to the term "SHPO" in this Agreement are understood to refer only to the THPO for review of these Undertakings. All references to the term "SHPO" are understood to include both the SHPO and the THPO for review of such Undertakings off Tribal lands, unless the SHPO declines to participate in such review.
2. FEMA will require any Federal agencies participating in the Undertaking to consult with the THPO in accordance with this Agreement and Addendum.
3. The signatories recognize that the SHPO will participate as a consulting party pursuant to this Agreement if an Undertaking on Tribal lands affects historic properties off Tribal lands. The SHPO may also participate in consultation if requested in accordance with 36 CFR § 800.30(1).
4. This Addendum takes effect on the date it is fully executed by FEMA, [any other participating Federal agency], and the THPO.

SIGNATORY PARTIES:

FEMA, [any OTHER FEDERAL AGENCY], and the THPO

APPENDIX C
[FIRE GRANT RECIPIENT]
ADDENDUM TO THE PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE LOUISIANA STATE HISTORIC PRESERVATION OFFICER,
THE LOUISIANA OFFICE OF HOMELAND SECURITY AND EMERGENCY PREPAREDNESS,
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

WHEREAS, the Federal Emergency Management Agency (FEMA), incorporated into the Department of Homeland Security, Emergency Preparedness and Response Directorate, assists qualified applicants with Grants pursuant to the Federal Fire Prevention and Control Act of 1974, as amended (15 U.S.C. § 2201 et seq.) (a Program); and

WHEREAS, FEMA, and the Louisiana State Historic Preservation Officer, have recognized that these Grants are directly dispersed to Fire Grant Recipients (Recipients), who did not participate in the development of this Programmatic Agreement (Agreement); and

WHEREAS, FEMA has determined that implementation of this Program may affect properties in the State of Louisiana listed in or eligible for the National Register of Historic Places (historic properties), and has consulted with Recipients, pursuant to 36 CFR § 800.14(b)(3) of the regulations implementing Section 106 of the National Historic Preservation Act;

NOW, THEREFORE, FEMA has requested that the Recipients execute this Addendum to facilitate the Section 106 review of Undertakings that may affect historic properties.

STIPULATIONS

FEMA will require that the following Stipulations be implemented:

1. FEMA will consult with a Recipient, in lieu of the Louisiana Homeland Security and Emergency Preparedness (LOHSEP), pursuant to this Agreement, for all of the Recipient's Undertakings that may affect historic properties. The Recipient will participate in the review of all such Undertakings in accordance with this Agreement. All references to the terms "LOHSEP" or "its applicants" in this Agreement are understood to refer only to the Recipient for review of these Undertakings.
2. FEMA will require any other Federal agencies participating in the Undertaking to consult with the Recipient, in lieu of LOHSEP, in accordance with this Agreement and Addendum.
3. This Addendum takes effect on the last date of signature by FEMA, (any other participating Federal agency), and the Recipient.

SIGNATORY PARTIES:

FEMA, (any OTHER FEDERAL AGENCY), and the Recipient